

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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<b>Title:</b> CARDIAC SUPPORT DEVICE WITH DIFFERENTIAL EXPANSION	<b>Docket No.</b> 59013-331629 <b>Customer No.:</b> 25764

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## REPLY BRIEF

This Reply Brief is submitted pursuant to 37 C.F.R. 41.41 in response to the Examiner's Answer mailed on October 5, 2007, including the New Grounds of Rejection set forth therein.

No fee is believed necessary. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 06-0029 and notify us of the same.

1. **STATUS OF CLAIMS**

Claims 18, 19, 22, 23, 25, 26, 28, 34 and 35 stand rejected and are the subject of this appeal. Claims 1-17, 20-21, 24, 27, and 29-33 have been canceled. Claims 36 and 37 are allowed.

**2. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

**New Ground of Rejection:** Whether claims 18, 19, 22, 23, 26, 28, 34 and 35 are unpatentable under 35 U.S.C. § 102(b) over U.S. Patent No. 1,682,119 to Field (the “Field patent”) as evidenced by U.S. Patent No. 3,452,742 (the “Muller patent”).

**Ground of Rejection 1:** Whether claims 18, 19, 22, 23, 28 and 35 are unpatentable under 35 U.S.C. § 102(e) over U.S. Patent No. 5,839,842 to Wanat, et al. (the “Wanat patent”)

**Ground of Rejection 2:** Whether claims 18, 19, 22, 23, 26, 28, 34 and 35 are unpatentable under 35 U.S.C. § 102(b) over the Field patent).

**Ground of Rejection 4:** Whether claims 18, 19, 22, 23, 25, 28, 34 and 35 are unpatentable under 35 U.S.C. § 102(b) over U.S. Patent No. 2,376,452 to Mehler (the “Mehler patent”).

In the Examiner’s Answer, previous Ground of Rejection 3 based on U.S. Patent No. 3,551,543 was withdrawn.

## ARGUMENT

### New Ground of Rejection:

*The Field Patent, as evidenced by the Muller Patent, does not Anticipate Claims 18, 19, 22, 23, 26, 28, 34 and 35 under 35 U.S.C. § 102(b).*

The Field patent discloses a cleaning device including a soap contained in an “envelope or container” made from a metallic mesh. *See* Figs. 1-2; *see also* page 1, ll. 35-57. The disclosed metallic mesh envelope provides “scraping edges” for “scraping the surface to be cleaned.” *See* page 2, ll. 4-15. As disclosed, preferred materials for the metallic mesh cleaning device of the Field patent include copper, aluminum, or “German silver.” *See* page 1, ll. 52-55. The Field patent formed the basis for the previous Ground of Rejection 2, which is fully addressed in the Appeal Brief filed July 18, 2007. In the New Ground of rejection, the Examiner asserts the Field patent and relies upon the Muller patent as evidence that “German silver” is a biocompatible material. The Appellants respectfully submit that the Muller patent does not establish that the Field patent’s disclosure of German silver as an exemplary material for the disclosed metal mesh cleaning device satisfies the limitation of claim 18 requiring a device for treating a disease of a heart, the device comprising a jacket constructed of biocompatible material.

The Muller patent generally discloses a “spring guide” for use in catheterization procedures. The Muller patent itself does not specify that German silver in general is biocompatible, and does not specify that the disclosed spring guide itself is or must be biocompatible. Furthermore, as understood by the Appellants, unlike the jacket of the claimed invention, the spring guide of the Muller patent is not intended to be implanted or even to have prolonged intimate contact with the heart. Rather, as understood, the Muller patent teaches that such spring guides are intended to be removed once the catheterization procedure is complete. *See, e.g.*, Col. 1, ll. 56-64. Thus, the Appellants respectfully submit that the Muller patent’s mere reference to German silver as an exemplary material, without further discussion or explanation, does not demonstrate that the material itself, particularly as disclosed in the Field patent, would be considered to be a biocompatible material as claimed.

Moreover, the Appellants respectfully submit that the preferred materials for the metallic mesh cleaning device of the Field patent further emphasize the fundamental differences between this device and the claimed invention. Even if Field did disclose a

biocompatible material, the fundamental differences between the Field patent and the subject matter of independent claim 18 compel reversal of the New Ground of Rejection. For example, as acknowledged in the Examiner's Answer, the Field patent's cleaning device includes "scraping edges." The Examiner's Answer at page 16 states that "the edges are not intended to cut or damage the surface of the material they are used on." The Field patent teaches, however, that the disclosed metal fabric affords "a certain amount of scraping and scrubbing action without danger of scoring or scarring the surfaces of **aluminum utensils** and **other metal surfaces** on which it may be used." Page 1, ll. 41-51 (emphasis added). *See also* page 2, ll. 25-30 ("If the metal ribbons of the fabric are of soft metal and as thin as may be desirable for properly scouring **metal surfaces** without scratching them, rough usage of the device may wear out the fabric before the soap has been used up.") (emphasis added). Thus, if anything, the Field patent teaches that the disclosed metal fabric device be configured so as to not score or scar **metallic** surfaces, e.g., utensils. The Appellants respectfully submit that it plainly does not follow that Field's cleaning device is also capable of use as a device for treating a disease of a heart, the device comprising a jacket dimensioned to be placed on said heart with said jacket surrounding at least a lower portion of said heart and sized and shaped to snugly conform to an external geometry of said heart to constrain circumferential expansion of said heart.

Finally, for further explanation of the differences between the disclosure of the Field patent and the claimed invention, the Appellants refer to the Appeal Brief filed July 18, 2007.

For at least the reasons stated above, the Appellants respectfully submit that the New Ground of Rejection based on the Field and Muller patents cannot be sustained.

**Grounds of Rejection 1, 2, and 4:**

With respect to the Grounds of Rejection 1, 2, and 4 based, respectively, on the Wanat patent, the Field patent alone, and the Mehler patent, the Appellants maintain that these patents fail to anticipate the claims under appeal for at least the reasons set forth in the Appeal Brief filed July 18, 2007.

Furthermore, with respect to the claimed differential expansion capabilities of the claimed invention, the Appellants believe that certain positions stated for the first time in the

Examiner's Answer fail to properly consider the claim language as a whole. With respect to the Wanat patent, the Examiner's Answer states on page 13 that

[t]he diamonds are oriented such that the diamond may expand more in the longitudinal direction than in the circumferential direction in response to a force applied by the heart in a longitudinal direction. The claim does not require the force to be applied in any particular direction.

The Appellants respectfully disagree with this position. Claim 18 clearly requires that the first direction the jacket to be more readily expandable in one direction than in a direction transverse to that direction. Even if the mesh bag of Wanat did behave in the manner stated in the Examiner's Answer, which is entirely unclear from Wanat and which the Appellants do not concede, this does not establish that the disclosed mesh bag of Wanat is more readily expandable in one direction than in a direction transverse to that direction.

The Examiner's Answer makes similar assertions at page 15 with respect to the Field patent and at page 17 with respect to the Mehler patent. Again, even if the devices disclosed in Field and Mehler behaved in the manner asserted by the Examiner, which the Appellants do not concede, this would not establish that the disclosed devices are more readily expandable in one direction than in a direction transverse to that direction.

Thus, the Appellants maintain that the rejections under 35 U.S.C. § 102 based on the Wanat, Field, and Mehler patents cannot be sustained.

**CONCLUSION**

For at least the reasons set forth above and in the Appeal Brief filed July 18, 2007, claims 18, 19, 22, 23, 25, 26, 28, 34 and 35 are believed to be patentable over the prior art of record and in condition for allowance. Reversal of the outstanding rejections of the foregoing claims and allowance of all pending claims are respectfully requested.

Respectfully Submitted,

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